BEFORE THE BOARD OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF APPLICATION FOR RESERVATION OF WATER NO. 9942-r42C BY THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	FINDINGS OF FACT AND CONCLUSIONS OF LAW OF APPLICATION NO. 9942-r42C

The above-entitled matter came on regularly for hearing starting on or about August 11, 1977, in Billings, Montana, before the Montana Board of Natural Resources and Conservation and its duly appointed Hearing Examiner, James Driscoll. The Applicant appeared by and through its counsel of record, Richard Gordon. The Montana Department of Health and Environmental Sciences appeared by and through its counsel of record, Mona Jamison. The Montana Department of Fish and Game appeared by and through its counsel of record, F. Woodsite Wright and Clayton Herron. The fourteen applicant conservation districts appeared by and through their counsel of record, Gary Spaeth. The Montana Power Company appeared by and through its counsel of record, Robert Woodahl. Witnesses were duly sworn, and oral and documentary evidence was introduced.

The Board, having read and fully considered the complete record, makes the following Findings of Fact and Conclusions of Law relating to the Department of Natural Resources and Conservation, Application 9942-r42C:

FINDINGS OF FACT

1. The Department of Natural Resources and Conservation has applied for the reservation of a storage right of up to 450,000 acre-feet of water per year (af/y) from the Tongue River for enlarging the existing Tongue River Reservoir. This is an increase of 383,000 af/y over the existing Reservoir (Application No. 9942-r42C).

Findings Related to the Purpose of the Reservation (89-890(3)(a)).

2. The primary purpose of this reservation is to reserve water for the future expansion of an existing state-owned multipurpose reservoir on the Tongue River (Tr. Vol. 4, following p. 140, Testimony of Orrin Ferris, p. 2).

3. A purpose of this reservation is to ensure that the water supply of the Tongue River Subbasin would be available for future needs, uses, and purposes (Montana Department of Natural Resources and Conservation, Application No. 9942-r42C).

4. A purpose of this reservation is to make water available in the Tongue River Subbasin for all beneficial uses recognized by law and at a price all can afford to pay (Tr. Vol. 4, following p. 140, Testimony of Ferris, p. 2).

5. A purpose of this reservation is to provide a reasonable allocation of water among beneficial users, although there are many factors that will ultimately determine an exact allocation of water from the project (Tr. Vol. 4, following p. 140, Testimony of Ferris, p. 2).

6. A purpose of this reservation is to protect uses such as irrigated agriculture which cannot afford to pay the full cost of new water development or the full cost of maintaining existing water development (Tr. Vol. 4, Cross of Ferris, p. 142).

7. A purpose of this reservation is to ensure that water is available for an enlarged project which would protect the over 35,000 acre-feet now stored in the existing Tongue River Reservoir and used by existing irrigators (Tr. Vol. 4, following p. 81, Testimony of Richard Bondy, p. 38; Tr. Vol. 4, Cross of Bondy, p. 85).

8. A purpose of this reservation, as envisioned, is to provide water for full irrigation of 13,000 additional acres of irrigable land (Tr. Vol. 4, follwing p. 99, Testimony of Gary Fritz, p. 2).

9. Maintenance of instream flows is one of the potential uses for which the reservation request was made (Montana Department of Natural Resources and Conservation Application No. 9942-r42C; Tr. Vol. 4, Redirect of Bondy, p. 98).

10. A purpose of this reservation is to secure a priority date for the use of the applied-for water that is earlier than the priority date such use would have if a permit were obtained immediately before construction or use began (Tr. Vol. 4, following p. 131, Testimony of Keith Corrigall, p. 2; Montana Department of Natural Resources and Conservation, Application No. 9942-r42C).

11. It is established to the satisfaction of the Board that the purpose of the reservation has been shown (Findings 2 through 10).

Findings of Fact Related to Need for the Reservation (89-890(3)(b)).

12. The reservation of water is needed because there is competition for Yellowstone Basin water which may affect the ability of the Applicant to obtain a water right by permit in the future (Montana Department of Natural Resources and Conservation, attachment submitted with Application No. 9942-r42C, p. 2).

13. The reservation of water is needed because it will secure a priority date for the project that is earlier than the priority date the project would have if a permit were obtained immediately before construction or use began (Draft EIS, Vol. I, p. 1).

14. The reservation of water is needed because there is a need for development of more irrigation water in the Tongue River Subbasin (Tr. Vol 4, following p. 99, Testimony of Fritz, p. 3).

15. The reservation of water is needed because the major water supply problem in the Tongue River Subbasin is lack of adequate storage (Montana Department of Natural Resources, Application No. 9942-r42C, supplemental information of May 5, 1977, p. 3).

16. The reservation of water is needed because no further water is available for irrigation from existing sources (Tr. Vol. 4, following p. 99, Testimony of Fritz, p. 2).

17. The reservation of water is needed because the yield of the existing reservoir is fully committed (Tr. Vol. 4, following p. 140, Testimony of Ferris, p. 2).

18. The reservation of water is needed because irrigation of potentially irrigable land is not possible in the Tongue River Subbasin without expansion of the Tongue River Dam (Tr. Vol. 4, following p. 99, Testimony of Fritz, p. 3).

19. The reservation of water is needed because it provides adequate water for an intermediate level of irrigation development at a price irrigators can afford (Tr, Vol. 4, following p. 99, Testimony of Fritz, pp. 5 through 9).

20. The reservation of water is needed because nearly 22,000 potentially irrigable acres are located within one-half mile of the Tongue River and less than 50 feet in elevation above the river, and the project could provide new full-service irrigation to a large portion of these potentially irrigable acres (Tr. Vol. 4, following p. 99, Testimony of Fritz, p. 3).

21. The reservation of water is needed because the proposed project will protect the existing project's water users from possible loss of the project (Tr. Vol. 4, following p. 140, Testimony of Ferris, p. 4).

22. The reservation of water is needed because the existing project needs extensive repairs which would be too expensive for existing users (Tr, Vol. 4, following p. 140, Testimony of Ferris, p. 4).

23. The reservation of water is needed because failure of the existing Tongue River Dam would be a disaster to the Tongue River Subbasin (Tr. Vol. 4, following p. 81, Testimony of Bondy, p. 34).

24. The reservation of water is needed because, without extensive repair to the existing project, much of the irrigation now present in the Tongue River Subbasin will be lost (Tr. Vol. 4, Cross of Fritz, p. 102).

25. The reservation of water is needed because operation of the existing reservoir is already constrained to reduce the use of the deteriorating spillway (Tr. Vol 4, following p. 140, Testimony of Ferris, p. 4).

26. The reservation of water is needed because replacing the existing spillway would be too expensive for present users (Tr. Vol. 4, following p. 81, Testimony of Bondy, p. 38).

27. The reservation of water is needed because the existing spillway is too small to safely pass floods that are known to be possible in the Tongue River Subbasin (Tr. Vol. 4, following p. 81, Testimony of Bondy, pp. 34 through 37).

28. The reservation of water is needed because, although financing the repairs would be impossible for existing users, financing the repairs and the construction of a larger structure would be possible because the additional storage could be sold at a price high enough to pay for a substantial amount of the costs (Tr. Vol. 4, following p. 81, Testimony of Bondy, p. 38; Tr. Vol. 4, Cross of Bondy, p. 85).

29. The reservation of water is needed because, in addition to the enlarged spillway associated with the proposed project, many other features would be incorporated to make the dam safe (Montana Department of Natural Resources and Conservation, Application No. 9942-r42C; Tr. Vol. 4, following p. 81, Testimony of Bondy, pp. 15 through 19).

30. The reservation of water is needed because, although the cost to merely provide an adequate spillway for the existing dam at its present capacity is $30,112,000 (Tr. Vol. 4, following p. 81, Testimony of Bondy, p. 2), the cost to provide 100,000 acre-feet firm annual yield (60,000 acre-feet more than the 40,000 acre-feet provided by the existing reservoir) varies from $33,890,000 for raising

the reservoir directly to the maximum elevation to $40,131,000 if the dam is raised in stages after first building a spillway at the existing elevation (Tr. Vol. 4, following p. 81, Testimony of Bondy, pp. 2 7 and 38).

31. The reservation of water is needed because the project is complex, and there are numerous constraints to its immediate development; development of the project by a water use permit would have to be immediate (Tr. Vol. 4, following p. 140, Testimony of Ferris, pp. 3 and 4).

32. The reservation of water is needed because there are many strippable coal reserves near the Tongue River Reservoir (Draft EIS, Vol. I, p. 39), and the cost of land acquisition will decrease significantly when coal near the reservoir has been mined (Tr. Vol. 4, following p. 131, Testimony of Corrigall, p. 2).

33. It is established to the satisfaction of the Board that the need for the reservation of water has been shown (Findings 12 through 32).

Findings Related to Amount of Water Necessary for the Purpose of the Reservation (89-890(3)(c)).

34. An annual average of 187,080 acre-feet is diverted from Tongue River for irrigation; 87,930 acre-feet of that is depleted (Draft EIS, Vol. I, p. 108).

35. The existing Tongue River Reservoir, seven miles northeast of Decker, now provides 67,000 acre-feet of storage, 40,000 of which is firm annual yield (Draft EIS, Vol. I, p. 108; Tr. Vol. 4, following p. 81, Testimony of Bondy, p. 2).

36. A reservation of a storage right of up to 450,000 acre-feet of water per year would fully develop Montana's share of the Tongue River and would provide a reservoir with a firm annual yield of 112,000 acre-feet (Tr. Vol. 4, following p. 81, Testimony of Bondy, pp. 3 and 15).

37. Provision of 450,000 acre-feet of storage annually could provide 72,000 acre-feet of firm annual yield for new use, in addition to the 40,000 acre-feet yield now obligated in the existing reservoir, while releasing an average of 75 cfs below

the reservoir (Montana Department of Natural Resources and Conservation, Application No. 9942-r42C; Tr. Vol. 4, following p. 81, Testimony of Bondy, p. 24; Tr. Vol. 4, Cross of Fritz, p. 106 and 107; Tr. Vol. 4, following p. 140, Testimony of Ferris, p. 6).

38. The resolution of existing constraints on development of the Tongue River could increase or decrease the amount of water available to Montana for development, but considering all reasonable possibilities, the 450,000 acre-foot reservation is adequate and necessary (Tr. Vol. 4, following p. 140, Testimony of Ferris, pp. 5 and 6).

39. An adequate economic feasibility analysis for the proposed development, based upon sound engineering and user cost estimates, has been submitted (Tr. Vol. 4, Cross of Ferris, p. 143; Tr. Vol. 4, following p. 81, Testimony of Bondy, pp. 39 and 40; Tr. Vol. 4, following p. 99, Testimony of Fritz, pp. 3 through 10; Tr. Vol. 4, following p. 131, Testimony of Corrigall, pp. 4 through 10).

40. Costs for irrigation, assuming the use of center-pivot sprinklers and including initial costs and annual operating costs, were calculated for each parcel of irrigable land (Tr. Vol. 4, following p. 99, Testimony of Fritz, p. 4).

41. Of the proposed additional firm annual yield, it is envisioned by the Applicant that 29,250 af/y would be allocated to agriculture for irrigation (Tr. Vol. 4, following p. 99, Testimony of Fritz, p. 6).

42. Of the proposed additional firm annual yield, it is envisioned by the Applicant that 23,750 af/y would be allocated to industry in order to meet the project cost (Tr. Vol. 4, following p. 99, Testimony of Fritz, p. 6; Tr. Vol. 4, following p. 131, Testimony of Corrigall, pp. 3 through 10).

43. A minimum of 320,000 acre-feet of new storage would be required to provide this total of 60,000 acre-feet of firm annual yield for new use (Tr. Vol. 4, following p. 81, Testimony of Bondy, p. 5; Findings 41 and 42).

44. Further economic feasibility studies may dictate increasing or decreasing the amount of water to be made available for industrial sales (Tr. Vol. 4, Cross of Corrigall, p. 133).

45. The firm annual yield estimates are conservative and are based upon a conservative allocation under the Yellowstone Compact, a reserved Indian water right assumption, an assumption of prior rights in Montana and Wyoming, and a severe drought condition (Tr. Vol. 4, following p. 81, Testimony of Bondy, pp. 21 through 30).

46. Further resolution of Indian rights and the Yellowstone Compact would allow for better water supply estimates and a more accurate size estimate of a reservoir to provide a given firm annual yield (Tr. Vol. 4, following p. 81, Testimony of Bondy, p. 42).

47. The Department of State Lands has requested a water reservation of 1,431 acre-feet per year from the Tongue River (Department of State Lands, Application 9931-r); and a water reservation request of 390 acre-feet per year from the Tongue River to be used for irrigation of state-owned lands (Department of State Lands, Application 9933-r).

48. Although no significant additional irrigation development can occur in the Tongue River Subbasin unless new storage is developed, the Montana Department of State Lands Application includes no plans for development of storage in the Tongue River Subbasin (Draft EIS, Vol. II, p. 244 and Applications 9931-r and 9933-r).

49. With the expansion of the existing state-owned multipurpose reservoir on the Tongue River, there will be sufficient storage for the amount of water requested from the Tongue River by the Department of State Lands in Application 9931-r and Application 9933-r.

50. The following Conservation Districts have requested a water reservation from the Tongue River to irrigate agricultural lands:

a) Big Horn Conservation District has requested a reservation of 1,034 acre-feet per year from the Tongue River (Application No. 9952-r43P).

b) Rosebud Conservation District has requested a reservation of 7,144 acre-feet per year from the Tongue River (Application No. 10,005-r42KJ).

c) North Custer Conservation District has requested 10,897 acre-feet per year from the Tongue River (Application No. 9947-r42M).

51. Although no significant additional irrigation develoment can occur in the Tongue River Subbasin unless new storage is developed, the Big Horn, Rosebud, and North Custer Conservation Districts' Applications include no plans for development of storage in the Tongue River Subbasin (Draft EIS, Vol. II, p. 244, and Applications 9952-r43P, 10,005-r42KJ and 9947-r42M).

52. With the expansion of the existing state-owned multipurpose reservoir on the Tongue River, there will be sufficient storage for the amount of water requested from the Tongue River by the Big Horn, Rosebud, and North Custer Conservation Districts.

53. The average annual minimum flows in the Tongue River at Miles City is approximately 30 cfs (Draft EIS, Vol. II, p. 358).

54. The flow of the Tongue River at Miles City has been zero (Tr. Vol. 4, Recross of Fritz, p. 128).

55. In order to maintain a flow in the Tongue River and contribute to the instream reservation of the Department of Fish and Game below the proposed multi-purpose reservoir on the Tongue River, it is necessary for the Department of Natural Resources to cause to release an average of 75 cfs from the Reservoir.

56. It is established to the satisfaction of the Board that a storage right of up to 450,000 af/y which is to include all existing water rights is the amount of water necessary for the purpose of the reservation at least to the year 2000. However, this reservation is subject to the following:

a) Part of this reservation is to be used to meet the request of the Department of State Lands reservation request for 1,431 acre-feet per year from the Tongue River (Application 9931-r) and 390 acre-feet per year from the Tongue River (Application 9933-r).

b) Part of this reservation is to be used to meet the request of the Big Horn Conservation District's reservation request for 1,034 acre-feet per year from the Tongue River (Application 9952-r43P).

c) Part of this reservation is to be used to meet the reservation request of the Rosebud Conservation District for 7,144 acre-feet per year from the Tongue River (Application No. 10,005-r42KJ).

d) Part of this reservation is to be used to meet the reservation request of North Custer Conservation District for 10,897 acre-feet per year from the Tongue River (Application No. 9947-r42M).

e) The Department of Natural Resources is to cause to release an average of 75 cfs from the Reservation in order that for the instream reservation in the Tongue River of the Department of Fish and Game to be met.

Findings Related to the Public Interest (89-890(3)(d)).

58. The existing project will have to be abandoned unless it is repaired, but an expanded project would increase benefits now realized by the public, such as a good fishery and agricultural use (Tr. Vol. 4, following p. 99, Testimony of Fritz, p. 9; Tr. Vol. 4, following p. 140, Testimony of Ferris, p. 5).

59. Estimates of the extent of existing rights have been taken into account in the analysis of the proposed project, and such existing rights would be protected by the proposed project (Tr. Vol. 4, following p. 81, Testimony of Bondy, p. 26).

60. The information provided on plans for construction of the diversion conveyance and application facilities and the maps of the location of potential irrigable lands to be served by the project contain sufficient detail to adequately define the size and function of such facilities (Montana Department of Natural Resources and Conservation, Application No. 9942-r42C).

61. Private development of the proposed project would likely result in single-purpose development, selling water to the highest bidder (Tr. Vol. 4, following p. 140, Testimony of Ferris, p. 6).

62. Reservation of water by the State would result in a plan to optimize the public benefit (Tr. Vol. 4, following p. 140, Testimony of Ferris, p. 6).

63. Public interest has been served by many projects developed by the Montana Department of Natural Resources and Conservation and its predecessors (Tr. Vol. 4, following p. 140, Testimony of Ferris, p. 7).

64. The expanded project would provide water to all Tongue River Subbasin water users at a price they can afford (Tr. Vol. 4, Testimony of Ferris, p. 6).

65. The reservation can provide a substantial amount of additional stored water for use in the Tongue River Subbasin at a cost only marginally greater than must, in any event, be expended to repair this existing facility at its present storage capacity (Tr. Vol. 4, following p. 81, Testimony of Bondy, pp. 2 and 38).

66. The proposed expansion of the project would produce net benefits to the economy and the environment (Tr. Vol. 4, following p. 99, Testimony of Fritz, p. 6).

67. The economic feasibility of the proposed project has been demonstrated by the completion of a reconnaissance-level benefit/cost evaluation (Montana Department of Natural Resources and Conservation, Application No. 9942-r42C).

68. Because benefits of the proposed project would exceed costs, the project is economically viable (Tr. Vol. 4, following p. 131, Testimony of Corrigal, p. 4).

69. Water from the proposed project can be made available in sufficient quantities and at a reasonable cost to both agriculture and industry (Tr. Vol. 4, following p. 140, Testimony of Ferris, p. 7).

70. The economic analysis of the benefits and costs concerning the project is sound (Tr. Vol. 4, Cross of Corrigall, p. 140).

71. Additional storage can be provided either by raising the existing dam or by building a new dam downstream (Tr. Vol. 4, following p. 81, Testimony of Bondy, p. 3).

72. Additional storage can be provided at the existing dam site by constructing the dam at its maximum elevation directly or by raising the dam to successively higher elevations in stages by using gates after first building a spillway at the existing elevation (Tr. Vol. 4, following p. 81, Testimony of Bondy, p. 38).

73. The mineral fuel resources of the Yellowstone Basin are extensive and important (Draft EIS, Vol. I. p. 36).

74. The largest coal mine in the Yellowstone Basin is adjacent to the Tongue River Reservoir (Draft EIS, Vol. I, p. 98).

75. Staged raising of the reservoir could begin soon, keeping the reservoir level below the coal mines until mining near the reservoir is complete (Tr. Vol. 4, following p. 81, Testimony of Bondy, pp. 39 and 41).

76. Staged raising of the reservoir would reduce acquisition costs and land rights conflicts (Tr. Vol. 4, following p. 140, Testimony of Ferris, p. 3).

77. The Montana Department of Natural Resources and Conservation is now conducting studies to estimate the feasibility of adding hydroelectric generating facilities to its projects (Tr. Vol. 4, following p. 81, Testimony of Bondy, p. 41).

78. The Montana Department of Natural Resources and Conservation intends to pursue the addition of hydroelectric generation at the Tongue River Dam (Tr. Vol. 4, following p. 140, Testimony of Ferris, p. 7).

79. Hydroelectric generation is feasible for the enlarged reservoir (Tr. Vol. 4, following p. 81, Testimony of Bondy, p. 41; Tr. Vol. 4, Cross of Bondy, p. 92).

80. An ideal time to add generating facilities would be during expansion of the project (Tr. Vol. 4, following p. 140, Testimony of Ferris, p. 7).

81. A 6-megawatt power plant could be constructed with the enlarged project to produce 21 million kilowatt-hours of electricity per year (Tr. Vol. 4, Cross of Bondy, p. 92).

82. Revenue for hydropower sales could be used for repairs and improvements to this and other state water projects (Tr. Vol. 4, Cross of Bondy, p. 95).

83. Private water development in the Tongue River Subbasin would cost up to $50.00 per acre-foot (Tr. Vol. 4, following p. 99, Testimony of Fritz, p. 3).

84. Differential pricing of water is an accepted method of marketing water, and by subsidizing irrigation, differential pricing results in an economic benefit to the state (Tr. Vol. 4, Cross of Fritz, p. 122).

85. Irrigation would be economically feasible with the proposed project (Tr. Vol. 4, following p. 99, Testimony of Fritz, pp. 6 through 10; Tr. Vol 4, Cross of Fritz, p. 102).

86. Water from the existing reservoir provides full or supplemental irrigation for nearly 17,000 acres (Tr. Vol. 4, following p. 99, Testimony of Fritz, p. 8).

87. Most of the existing irrigation using water from the Tongue River Reservoir cannot continue unless repairs are made to the dam (Tr. Vol. 4, Cross of Fritz, p. 102).

88. All of the lands proposed to be irrigated are suitable for irrigation (Tr. Vol. 4, following p. 99, Testimony of Fritz, p. 8), and no land below class 3 has been included in the project (Montana Department of Natural Resources and Conservation, Application No. 9942-r42C).

89. The Montana Department of Health and Environmental Sciences did not apply for a reservation of water for quality purposes in the Tongue River Subbasin (Tr. Vol. 4, following p. 81, Testimony of Bondy, p. 40).

90. The Tongue River has been dry in the past at Miles City (Tr. Vol. 4, Recross of Fritz, p. 128).

91. Maintenance and improvement of water quality can be adequately considered in development of the proposed project (Tr. Vol. 4, Cross of Ferris, pp. 152 through 155).

92. Water could be allocated from the proposed project for improving water quality and alleviating existing water quality problems (Tr. Vol. 4, Redirect of Fritz, p. 127; Tr. Vol. 4, Recross of Fritz, p. 129).

93. Any amount of the new water supply provided by the proposed project could be allocated to water quality, as the public interest dictates (Tr. Vol. 4, Cross of Ferris, p. 148).

94. Increases in total dissolved solids (TDS), if any, caused by the expanded project are unlikely to damage crops (Tr. Vol. 4, Cross of Frtiz, pp. 124 and 125).

95. The Tongue River Subbasin has an especially productive fishery (Draft EIS, Vol. I, p. 75).

96. The Tongue River Reservoir provides a warm-water fishery for walleye, northern pike, smallmouth bass, and crappies (Draft EIS, Vol. I, p. 76).

97. The Tongue River provides on the most diverse sport fisheries in the state (Draft EIS, Vol. I, p. 75).

98. The Tongue River Reservoir is a heavily used source of varied recreation (Draft EIS, Vol. I, p. 50).

99. Increasing the size of the Tongue River Reservoir would increase the recreation and fish and wildlife benefits of the existing reservoir (Tr. Vol. 4, Cross of Fritz, p. 108).

100. As the public interest dictates, fish and wildlife maintenance can be adequately considered in development of the proposed project (Tr. Vol. 4, Cross of Fritz, pp. 111 and 112; Tr. Vol. 4, Cross of Ferris, p. 147).

101. The existing reservoir and the proposed enlarged reservoir provide the benefit of waterfowl and fish habitat maintenance (Tr. Vol. 4, following p. 81, Testimony of Fritz, p. 9).

102. Without the existing project, irrigation carried out with existing water rights would dewater much of the Tongue River most years, thereby greatly reducing instream benefits (Tr. Vol. 4, following p. 140, Testimony of Ferris, p. 7).

103. The existing reservoir provides good habitat for several species of fish which thrive in the reservoir; they should continue to do well in the expnaded reservoir (Tr. Vol. 4, following p. 99, Testimony of Fritz, p. 9).

104. No endangered species have been identified that would be harmed by an enlarged Tongue River Reservoir (Draft EIS, Vol. I, p. 79).

105. The purchase of storage in the enlarged reservoir for maintenance of fish and wildlife habitat in the subbasin would be possbile if the reservation were granted (Tr. Vol. 4, Cross of Ferris, p. 145).

106. The planning process of the expanded Tongue River Project has been going on since 1967 (Tr. Vol. 4, following p. 81, Testimony of Bondy, p. 40).

107. The Montana Department of Natural Resources and Conservation has done a substantial amount of work on the expansion of the Tongue River Project, including:

a) A water supply study

b) Preliminary design of several alternative methods of expanding the project

c) Economic feasibility studies

d) Preliminary electrification studies

(Tr. Vol. 4, following p. 81, Testimony of Bondy, p. 41).

108. The Montana Legislature has supported the Tongue River Project and its proposed expansion through several actions including:

a) Funding for construction of the Tongue River Dam in the late 1930's

b) Funding for enlargement studies in the late 1960's

c) Funding for further enlargement studies in 1975

d) Directing the Montana Department of Natural Resources and Conservation to enter negotiations with potential users of an expanded project, with the State of Wyoming, and with the Indians

(Tr. Vol. 4, following p. 81, Testimony of Bondy, p. 41; Tr. Vol. 4, following p. 140, Testimony of Ferris, p. 8).

109. The Montana Legislature is likely to provide further direction in 1979 in the development of the Tongue River Project (Tr. Vol. 4, following p. 81, Testimony of Bondy, p. 41).

110. The proposed project conforms to the policy of this State and the purpose of the Water Use Act: to encourage the wise use of the State's water resources by making them available for appropriation consistent with the Water Use Act and provide for the wise utilization and development of conservation of water for the State for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystems (Tr. Vol. 4, Cross of Bondy, p. 88).

111. It is established to the satisfaction of the Board that the reservation of a storage right of up to 450,000 af/y which is to include all existing water rights, and is subject to the conditions mentioned in Finding 56, is in the public interest and that there will be progress toward completion of the facility and accomplishment of the purpose within a reasonable time in accordance with an established plan. This reservation is 384,000 af/y of new storage. (Findings 58 through 109; Montana Department of Natural Resources and Conservation, Application No. 9942-r42C).

CONCLUSIONS OF LAW

1. Chapter 8, Title 89, R.C.M. 1947, and in particular, Section 89-890, R.C.M. 1947, authorize the adoption by the Montana Board of Natural Resources and Conservation of orders reserving water to qualified applicants for reservation of water.

2. If ordered adopted, a reservation must be ordered adopted in accordance with Chapter 8, Tilte 89, R.C.M. 1947, and any rules adopted thereunder.

3. The Applicant, the Montana Department of Natural Resources and Conservation is an agency of the State of Montana and as such is entitled to apply to reserve waters within the State of Montana in accordance with 89-890, R.C.M. 1947, and any rules adopted thereunder.

4. All pertinent statutes and rules of the State of Montana have been adhered to in review of this reservation application, both by the Montana Department of Natural Resources and Conservation and by the Montana Board of Natural Resources and Conservation.

5. Based upon the above Findings of Fact, all pertinent criteria delineated at Section 89-890, R.C.M. 1947, and any rules adopted thereunder providing for the adoption of an order reserving water have been met.

6. Nothing found herein has bearing upon the status of water rights claimed by the Applicant other than those herein newly applied for, nor does anything found herein have bearing on the status of claimed water rights of any other party except in relation to those rights herein newly applied for, to the extent necessary to reach a conclusion herein.